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JAN 30 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TERON ALEXANDER FRANCIS, et al.,

Plaintiffs,

-against-

THE BRONX-LEBANON HOSPITAL CENTER,
et al.,

Defendants.

EOP Case

07 Civ. 9450 (GBD)

STIPULATION AND ORDER OF
SUBSTITUTION OF UNITED
STATES AS DEFENDANT FOR THE
DR MARTIN LUTHER KING, JR.
HEALTH CENTER, ROBERT C.
BINGHAM, D.D.S., AND ARNOLD V.
HOMER, D.D.S., AND DISMISSAL
OF THE ACTION AS AGAINST THE
UNITED STATES

WHEREAS on or about April 12, 2007, plaintiff Teron Alexander Francis, deceased, by
Marcerlyn Francis, as the Administratrix of the estate, goods, chattels and credits of Teron Alexander
Francis, and Marcerlyn Francis individually (collectively, "plaintiffs") filed a Summons and Verified
Complaint in the Supreme Court of the State of New York, Bronx County, Index No. 14179-07,
against the Bronx-Lebanon Hospital Center, the Dr. Martin Luther King, Jr. Health Center, Robert C.
Bingham, D.D.S., Arnold V. Homer, D.D.S., Indranil Gupta, M.D., Rajesh Shenoy, M.D., and "John
Doc," M.D./D.D.S., alleging, inter alia, that they committed negligent acts and omissions in providing
medical care to plaintiff Teron Alexander Francis and that, consequently, these negligent acts and
omissions led to plaintiff Teron Alexander Francis's wrongful death; and

WHEREAS on or about October 23, 2007, Michael J. Garcia, the United States Attorney for
the Southern District of New York removed plaintiffs' complaint to this Court pursuant to section
224(c) of the Public Health Service Act, 42 U.S.C. § 233(c), and 28 U.S.C. § 2679(d)(2), based on the

United States Attorney's certification, dated September 27, 2007, that defendants the Dr. Martin Luther King, Jr. Health Center, Robert C. Bingham, D.D.S., Arnold V. Palmer, D.D.S. were acting within the scope of their federal employment at all times relevant to the allegations of this complaint.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the plaintiffs, defendants the Dr. Martin Luther King, Jr. Health Center, Robert C. Bingham, D.D.S., Arnold V. Palmer, D.D.S., and the United States, by their respective counsel, as follows:

1. Pursuant to section 224(s), (c), of the Public Health Service Act, 42 U.S.C. § 233(a), (c), and 28 U.S.C. § 2679(d), the United States shall be substituted as defendant in this action to the extent plaintiffs' claims are against the Dr. Martin Luther King, Jr. Health Center, Robert C. Bingham, D.D.S., and Arnold V. Palmer, D.D.S.; and

2. All of plaintiffs' claims against the Dr. Martin Luther King, Jr. Health Center, Robert C. Bingham, D.D.S., Arnold V. Palmer, D.D.S. are dismissed with prejudice and without costs or attorney's fees to any party; and

3. Plaintiffs' claims as against the United States are dismissed without prejudice and without costs or attorney's fees to any party, such dismissal being made pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because plaintiffs failed to present an administrative claim to the appropriate federal agency as required under 28 U.S.C. § 2675(i); and

4. The parties understand and agree that this stipulation does not waive any rights of any party under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, or any other applicable law; and

5. The parties understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York
January 22, 2008

SONIN & GENIS
1 Fordham Plaza, Suite 204
Bronx, New York 10458
ATTORNEY FOR PLAINTIFFS

By:

ROBERT J. GENIS
Attorney for Plaintiffs

Dated: New York, New York
January 25, 2008

MICHAEL J. GARCIA
United States Attorney for the Southern
District of New York
ATTORNEY FOR DEFENDANTS
MARTIN LUTHER KING, JR. HEALTH
CENTER, ROBERT C. BINGHAM,
D.D.E., ARNOLD V. PALMER, D.D.S.
AND THE UNITED STATES OF
AMERICA

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SO ORDERED.

Dated: New York, New York
January 29, 2008

George B. Daniels
HON. GEORGE B. DANIELS / George B. Daniels
UNITED STATES DISTRICT JUDGE

JAN 30 2008